

22. (New) A method according to claim 21, wherein it includes the step of monitoring fixed bandwidth transmissions on said number of fixed bit rate channels and, on detection of a data tone in a fixed bandwidth transmission, switching said number of fixed bit rate channels to a variable bit rate data channel having a maximum bit rate dependent on what portion of said number of fixed bit rate channels is allocated to comprise said variable data rate channel.

23. (New) A method according to claim 22, wherein it includes the step of selecting a bit rate coding scheme for the variable bit rate data channel on detection of a data tone in a fixed bandwidth transmission and communicating said selected coding scheme to the base station.

24. (New) A method according to claim 22, wherein it includes, prior to selecting a coding scheme for the variable bit rate channel, the step of checking available bandwidth of said number of fixed bit rate channels and, if there is not sufficient available bandwidth to provide a variable bit rate channel having a highest permissible data rate, then selecting a bit rate coding scheme for the data channel that is the highest permissible data rate determined from current available bandwidth on said number of fixed rate channels.

25. (New) A method according to claim 20, wherein the same bit rate coding scheme is effected for the variable bit rate channel in both an uplink direction and a downlink direction.

26. (New) A method according to claim 20, wherein the method comprises operating a fixed wireless access (FWA) communications system.

#### Remarks

Claims 1-10 as filed are deleted and replaced by new claims 11-26 presented in this response.

The Examiner has rejected claims 1-10 as filed as either being anticipated by or being obvious over Gardner (US 5,857,147).

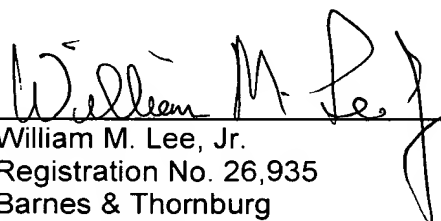
The claims as filed have been deleted and replaced by new claims 11-26 which are believed to patentably distinguish the present invention over the disclosure of Gardner. It will be noted that Gardner relates to a "soft" capacity limit system (Gardner, column 4, lines 52-57) whereas the present invention, having a number of fixed bit rate channels, can be said to be a "hard" capacity limit system in contrast with that of Gardner. As such, the teaching of Gardner is not applicable to that of the present invention since the technical problem it seeks to address is not one which is relevant to the system of the present invention.

Basis for the new claims 11-26 can be found throughout the specification and, in particular, the description bridging pages 6-9 relating to Figure 2.

Favorable reconsideration of this application is requested.

Respectfully submitted,

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